

Article - Criminal Procedure

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§3–106.

- (a) (1) In this section, “designated health care facility” means:
- (i) a State facility as defined in § 10–101 of the Health – General Article;
 - (ii) a State forensic residential center; or
 - (iii) a hospital or private residential facility under contract with the Health Department to house and treat individuals found to be incompetent to stand trial or not criminally responsible.
- (2) “Designated health care facility” does not include a correctional or detention facility or a unit within a correctional or detention facility.
- (b) If, after a hearing, the court finds that the defendant is incompetent to stand trial but is not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, the court may set bail for the defendant or authorize release of the defendant on recognizance.
- (c) (1) (i) If, after a hearing, the court finds that the defendant is incompetent to stand trial and, because of mental retardation or a mental disorder, is a danger to self or the person or property of another, the court shall order the defendant committed to the facility that the Health Department designates until the court finds that:
- 1. the defendant no longer is incompetent to stand trial;
 - 2. the defendant no longer is, because of mental retardation or a mental disorder, a danger to self or the person or property of others; or
 - 3. there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.
- (ii) If a court commits the defendant because of mental retardation, the Health Department shall require the Developmental Disabilities Administration to provide the care or treatment that the defendant needs.

(2) If the court commits a defendant to the Health Department under paragraph (1) of this subsection, the Health Department shall:

(i) admit the defendant to a designated health care facility as soon as possible, but not later than 10 business days after the Health Department receives the order of commitment; and

(ii) notify the court of the date on which the defendant was admitted to the designated health care facility.

(3) If the court commits the defendant under paragraph (1) of this subsection because of a mental disorder, the court may order the Health Department, as soon as possible after the defendant's admission, but not to exceed 48 hours, to:

(i) evaluate the defendant;

(ii) develop a prompt plan of treatment for the defendant under § 10-706 of the Health – General Article; and

(iii) evaluate whether there is a substantial likelihood that, without immediate treatment, including medication, the defendant will remain a danger to self or the person or property of another.

(4) If the Health Department fails to admit a defendant to a designated health care facility within the time period specified in paragraph (2)(i) of this subsection, the court may impose any sanction reasonably designed to compel compliance, including requiring the Health Department to reimburse a detention facility for expenses and costs incurred in retaining the defendant beyond the time period specified in paragraph (2)(i) of this subsection at the daily rate specified in § 9-402(b) of the Correctional Services Article.

(d) (1) To determine whether the defendant continues to meet the criteria for commitment set forth in subsection (c) of this section, the court shall hold a hearing:

(i) every year from the date of commitment;

(ii) within 30 days after the filing of a motion by the State's Attorney or counsel for the defendant setting forth new facts or circumstances relevant to the determination; and

(iii) within 10 business days after receiving a report from the Health Department stating opinions, facts, or circumstances that have not been previously presented to the court and are relevant to the determination.

(2) At any time, and on its own initiative, the court may hold a conference or a hearing on the record with the State's Attorney and the counsel of record for the defendant to review the status of the case.

(e) At a competency hearing under subsection (d) of this section, if the court finds that the defendant is incompetent and is not likely to become competent in the foreseeable future, the court shall:

(1) civilly commit the defendant as an inpatient in a medical facility that the Health Department designates provided the court finds by clear and convincing evidence that:

(i) the defendant has a mental disorder;

(ii) inpatient care is necessary for the defendant;

(iii) the defendant presents a danger to the life or safety of self or others;

(iv) the defendant is unable or unwilling to be voluntarily committed to a medical facility; and

(v) there is no less restrictive form of intervention that is consistent with the welfare and safety of the defendant; or

(2) order the confinement of the defendant for 21 days as a resident in a Developmental Disabilities Administration facility for the initiation of admission proceedings under § 7-503 of the Health – General Article provided the court finds that the defendant, because of mental retardation, is a danger to self or others.

(f) The provisions under Title 10 of the Health – General Article shall apply to the continued retention of a defendant civilly committed under subsection (e) of this section.

(g) (1) For a defendant who has been found incompetent to stand trial but not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, and released on bail or on recognizance, the court:

(i) shall hold a hearing annually from the date of release;

(ii) may hold a hearing, at any time, on its own initiative; or

(iii) shall hold a hearing, at any time, upon motion of the State's Attorney or the counsel for the defendant.

(2) At a hearing under paragraph (1) of this subsection, the court shall reconsider whether the defendant remains incompetent to stand trial or a danger to self or the person or property of another because of mental retardation or a mental disorder.

(3) At a hearing under paragraph (1) of this subsection, the court may modify or impose additional conditions of release on the defendant.

(4) If the court finds, at a hearing under paragraph (1) of this subsection, that the defendant is incompetent and is not likely to become competent in the foreseeable future and is a danger to self or the person or property of another because of mental retardation or a mental disorder, the court shall revoke the pretrial release of the defendant and:

(i) civilly commit the defendant in accordance with subsection (e)(1) of this section; or

(ii) order confinement of the defendant in accordance with subsection (e)(2) of this section.

(h) If the defendant is found incompetent to stand trial, defense counsel may make any legal objection to the prosecution that may be determined fairly before trial and without the personal participation of the defendant.

(i) The court shall notify the Criminal Justice Information System Central Repository of any commitment ordered or release authorized under this section and of any determination that a defendant is no longer incompetent to stand trial.

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